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Attorneys for Plaintiff  
PALMTREE ACQUISITION CORPORATION, a Delaware  
corporation f/k/a Catellus Development Corporation

**UNITED STATES DISTRICT COURT**

**FOR THE NORTHERN DISTRICT OF CALIFORNIA**

PALMTREE ACQUISITION CORPORATION, a  
Delaware corporation,

Plaintiff,

vs.

MICHAEL R. NEELY, an individual; PERRY J.  
NEELY, an individual; GARY NEELY, an  
individual; MICHAEL R. NEELY, PERRY J.  
NEELY and GARY NEELY dba MIKE'S ONE  
HOUR CLEANERS; CHARLES FREDERICK  
HARTZ dba PAUL'S SPARKLE CLEANERS;  
CHARLES F. HARTZ, an individual;  
MULTIMATIC CORPORATION, a New Jersey  
corporation; WESTERN STATES DESIGN, a  
California corporation; MCCORDUCK  
PROPERTIES LIVERMORE, LLC, a Delaware  
limited liability company individually and as the  
successor to JOHN MCCORDUCK, KATHLEEN  
MCCORDUCK, PAMELA MCCORDUCK,  
SANDRA MCCORDUCK MARONA, and IMA  
FINANCIAL CORPORATION, a California  
corporation; JOHN MCCORDUCK, individually;  
KATHLEEN MCCORDUCK, individually;  
PAMELA MCCORDUCK, individually; SANDRA  
MCCORDUCK MARONA, individually; IMA  
FINANCIAL CORPORATION, a California  
corporation; STARK INVESTMENT COMPANY,  
a California general partnership; GRUBB & ELLIS  
REALTY INCOME TRUST, LIQUIDATING  
TRUST, a California trust; and DOES 1-20,  
inclusive,

Defendants.

CASE NO. CV 08 3168 EMC

**JOINT CASE MANAGEMENT  
CONFERENCE STATEMENT**

ORDER RESETTING CMC

**HON. EDWARD M. CHEN**

**DATE: DECEMBER 19, 2013**

**TIME: 9:00 A.M.**

**COURTROOM: 5, 17TH FLOOR**

1 The parties who have appeared in the above-captioned environmental action have met and  
2 conferred and jointly submit the following Joint Case Management Conference Statement.

3 The parties have reached a settlement, which is currently circulating among the parties for  
4 signature. Once the settlement is signed, the parties will submit the settlement to this Court for  
5 approval as a good faith settlement under California Code of Civil Procedure sections 877 and 877.6.  
6 The parties anticipate this will happen within the next several weeks.

7  
8 1. **Date case was filed:** This case was filed on July 1, 2008. The Second  
9 Amended Complaint was filed on July 14, 2011 and the Fourth Amended Third Party Complaint was  
10 filed on August 24, 2011.

11 2. **List or description of all parties:** The parties to this case are as follows:

12 a. Plaintiff Palmtree Acquisition Corporation, successor to a former owner  
13 of the Livermore Arcade Shopping Center ("LASC"), one of two shopping centers  
14 comprising the subject property;

15 b. Defendant and Third Party Plaintiff Stark Investment Company, former  
16 owner of the LASC and Miller's Outpost Shopping Center ("MOSC"), the second  
17 shopping center comprising the subject property;

18 c. Defendant and Third Party Plaintiff The Kirrberg Corporation fka  
19 Multimatic Corporation, manufacturer of the dry cleaning machine at the LASC;

20 d. Defendants Michael R. Neely, Perry J. Neely and Gary Neely,  
21 individually and dba Mike's One Hour Cleaners, the dry cleaning operator at the  
22 LASC;

23 e. Defendant Charles Hartz, individually and dba Paul's Sparkle Cleaners,  
24 the dry cleaning operator at the MOSC;

25 f. Defendant Western States Design, distributor of the dry cleaning  
26 machine at the LASC;

27 g. Defendant McCorduck Properties Livermore, LLC, current owner of the  
28

1 MOSC;

2 h. Defendants John McCorduck, Kathleen McCorduck, Pamela  
3 McCorduck and Sandra McCorduck Marona, former owners of the MOSC;

4 i. Defendant IMA Financial Corporation, former owner of the MOSC; and

5 j. Third Party Defendant Dorothy Anderson, Trustee of The Anderson  
6 Marital Trust, dated February 28, 1979, as amended and restated August 31, 1994 and  
7 The Anderson Tax Deferral Trust, dated February 28, 1979, as amended and restated  
8 August 31, 1994, current owners of the LASC.

9 **3. Summary of all claims, counter-claims, cross-claims, third party claims:**

10 a. Plaintiff claims (1) contribution under CERCLA Sections 107(a) and  
11 (e)(2), 42 U.S.C. §§ 9607(a) and (e)(2), against all Defendants; (2) Declaratory Relief  
12 under CERCLA against all Defendants; (3) Continuing Public Nuisance against all  
13 Defendants; (4) Negligence against Defendants Neelys, Multimatic and Western States  
14 Design; (5) Equitable Indemnity against all Defendants; and (6) Declaratory Relief  
15 under state law against all Defendants.

16 b. Third Party Plaintiffs claim (1) costs under CERCLA Sections 107(a)  
17 and (e)(2), 42 U.S.C. §§ 9607(a) and (e)(2); (2) Declaratory Relief under CERCLA; (3)  
18 Equitable Indemnity; and (4) Declaratory Relief under state law against all Third Party  
19 Defendants.

20  
21 **4. Brief description of the event underlying the action:** This action is a “re-  
22 opener” of a prior action that was conditionally settled. The prior action was filed on February 3,  
23 1993 in the United States District Court for the Northern District of California and entitled *Grubb &*  
24 *Ellis Realty Income Trust, Liquidating Trust v. Catellus Development Corp., et al.*, and related cross-  
25 actions, Case No. C93-0383 SBA (“Prior Action”). The Prior Action concerned the alleged release of  
26 dry cleaning solvent perchloroethylene (“PCE”) from the dry cleaning establishments at the LASC  
27 and MOSC in Livermore, California. The California Regional Water Quality Control Board  
28

1 (“RWQCB”) had issued an Order to the potentially responsible parties consisting of dry cleaning  
 2 operators and property owners to remediate the soil and groundwater impacted by PCE contamination  
 3 from the centers. Following settlement of the Prior Action, certain parties requested, and the RWQCB  
 4 granted, the establishment of a Containment Zone with a Contingency Plan and the RWQCB issued a  
 5 new order in 1996 to that effect. However, on March 17, 2008 and March 21, 2008, the RWQCB  
 6 issued Directives requiring further investigation and monitoring of the PCE contamination, which also  
 7 potentially impacted the deeper aquifer, thereby allegedly triggering the “re-opener” provision in the  
 8 settlement agreement. Plaintiff Palmtree Acquisition Corporation filed this action on July 1, 2008,  
 9 seeking contribution under CERCLA and damages pursuant to the “re-opener” provision, among other  
 10 claims.  
 11

12           **5. Description of relief sought and damages claimed with an explanation as to**  
 13 **how damages are computed:** The parties seek both declaratory and monetary relief through the  
 14 Second Amended Complaint, the Fourth Amended Third Party Complaint and various cross-claims  
 15 and counter-claims which were deemed filed pursuant to Stipulations and Orders filed on August 3,  
 16 2011, October 27, 2011 and November 14, 2011. The parties seek reimbursement and contribution of  
 17 the amounts spent thus far on investigative costs (over \$1,000,000) as well as an allocation of future  
 18 investigative costs and remedial measures (to be determined) under CERCLA. The parties also seek  
 19 monetary damages for nuisance and negligence.  
 20  
 21

22           **6. Status of discovery (including any limits or cutoff dates):** Since September  
 23 2008, discovery has been stayed, including initial disclosures, so that the parties could engage in  
 24 mediation. These parties have been mediating this matter with Timothy Gallagher, Esq., along with  
 25 other potentially responsible parties, and are continuing to do so, while simultaneously working  
 26 cooperatively as a group to respond to the RWQCB’s directives and requirements. Indeed, Plaintiff  
 27 and Defendants, with the exception of Grubb & Ellis Realty Income Trust, Liquidating Trust, have  
 28

1 thus far spent over \$1,000,000 since March 2008 in their response efforts: including jointly hiring a  
 2 project manager and technical consultant; directing investigative measures and submitting a final  
 3 technical investigative report; submitting a work plan, directing work thereunder and submitting a  
 4 remedial investigation report with technical findings and proposed remedial alternatives; submitting a  
 5 remedial action plan; and coordinating among the various regulatory agencies. The responding parties  
 6 submitted a revised final remedial action plan to the RWQCB for approval on September 30, 2013.  
 7 The parties have also finalized a settlement among them, which is contingent upon a settlement in  
 8 another state court case involving one of the defendants in this action. A settlement in the state court  
 9 has also been reached. Both settlements are in the process of being signed. Both settlements are also  
 10 contingent on being approved by their respective courts as good faith settlements under California  
 11 law. Motions seeking court approval of these two settlements will be filed in the coming weeks.

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 14 **7. Procedural history of the case including previous motions decided and/or**  
 15 **submitted, ADR proceedings or settlement conferences scheduled or concluded, appellate**  
 16 **proceedings pending or concluded, and any previous referral to a magistrate judge:** As  
 17 described above, the parties have been mediating among themselves before Timothy Gallagher, Esq.  
 18 This case was initially referred to Magistrate Judge Chen but then transferred to Judge Patel on April  
 19 2, 2010 and then reassigned to Judge Chen on June 6, 2011. Motions previously decided in this case  
 20 consist of:

21  
 22 a. Application for good faith settlement determination by Plaintiff  
 23 Palmtree Acquisition Corporation and Defendant Northrop Grumman Systems  
 24 Corporation, granted October 4, 2010.

25 b. Motion to dismiss the First Amended Third Party Complaint by Third  
 26 Party Defendant Melinda Ellis Evers, Successor Trustee of the Harold A. Ellis, Jr.  
 27 Revocable Inter Vivos Trust, granted without prejudice on October 4, 2010.  
 28

c. Motion to dismiss the Second Amended Third Party by Third Party Defendant Melinda Ellis Evers, Successor Trustee of the Harold A. Ellis, Jr. Revocable Inter Vivos Trust, granted with prejudice on February 11, 2011.

d. Motion to dismiss one cause of action from the Third Amended Third Party Complaint, or in the alternative, for a more definite statement by Third Party Defendant Dorothy Anderson, granted without prejudice on August 4, 2011.

e. Motion to dismiss the Fourth Amended Third Party Complaint by Third Party Defendant Dorothy Anderson, denied on October 24, 2011.

f. Stipulation and order of good faith settlement determination as to the Neely parties, signed January 1, 2013.

8. **Other deadlines in place (before reassignment), including those for dispositive motions, pretrial conferences, and trials:** None.

9. **Any requested modification of these dates and reason for the request:**  
None.

10. **Whether the parties will consent to a magistrate judge for trial:** The parties to this Joint Case Management Conference Statement do not consent to a magistrate judge for trial.

11. **Whether Judge Chen has previously conducted a settlement conference in this case, and if so, whether the parties stipulate to him handling this case for trial pursuant to ADR Local Rule 7-2 or request his recusal:** Judge Chen has not previously conducted a settlement conference in this case.

12. **If there exists an immediate need for a case management conference to be scheduled in the action:** As noted above, the parties have reached a settlement and plan to file a motion shortly seeking this Court's approval of the settlement as one having been made in good faith under California Code of Civil Procedure sections 877 and 877.6. Under the terms of the settlement, once it is final, this action will be dismissed. That could happen as early as January or February 2014.

1 Therefore, there is no immediate need for a case management conference to be scheduled. The parties  
2 propose the scheduling of a further case management conference in June 2014 in the event the action  
3 has not been dismissed by that time.  
4

5 Dated: December 12, 2013

Cox, Castle & Nicholson, LLP

6  
7 By: /s/ Peter Morrisette  
Peter Morrisette  
8 Attorneys for Plaintiff Palmtree  
Acquisition Corporation, a Delaware  
9 corporation f/k/a Catellus Development  
Corporation  
10

11 Dated: December 12, 2013

GONSALVES & KOZACHENKO

12 By: /s/ Paul Kozachenko  
Paul Kozachenko  
13 Attorneys for Defendant & Third Party  
Plaintiff Stark Investment Company, a  
14 California limited partnership

15 Dated: December 12, 2013

The Costa Law Firm

16 By: /s/ Daniel P. Costa  
Daniel P. Costa  
17 Attorneys for Defendant & Third Party  
Plaintiff Stark Investment Company, a  
18 California limited partnership  
19

20 Dated: December 12, 2013

Claytor Law Group

21 By: /s/ James D. Claytor  
James D. Claytor  
22 Attorneys for Defendant Western State  
Design, a California corporation  
23  
24  
25  
26  
27  
28

1 Dated: December 12, 2013

BASSI, EDLIN, HUIE & BLUM LLP

2  
3 By: /s/ Farheena Habib  
Farheena Habib  
4 Attorneys for Defendants Michael R.  
Neely, Perry J. Neely, and Gary Neely,  
5 dba Mike's One Hour Cleaners

6 Dated: December 12, 2013

Dongell Lawrence Finney, LLP

7 By: /s/ Thomas A. Vandenberg  
8 Thomas A. Vandenberg  
9 Attorneys for Defendant & Third Party  
10 Plaintiff The Kirrberg Corporation f/k/a  
Multimatic Corporation

11 Dated: December 12, 2013

Rogers Joseph O'Donnell

12  
13 By: /s/ D. Kevin Shipp  
D. Kevin Shipp  
14 Attorneys for Defendant Charles  
Frederick Hartz, dba Paul's Sparkle  
15 Cleaners

16 Dated: December 12, 2013

Gordon, Watrous, Ryan, Langley, Bruno &  
Paltenghi

17  
18 By: /s/ Bruce C. Paltenghi  
Bruce C. Paltenghi  
19 Attorneys for Defendant McCorduck  
Properties Livermore, LLC, a Delaware  
20 limited liability company; John  
McCorduck; Kathleen McCorduck;  
21 Pamela McCorduck; and Sandra  
McCorduck Marona  
22

23 Dated: December 12, 2013

Stanzler Law Group

24 By: /s/ Jordan S. Stanzler  
Jordan S. Stanzler  
25 Attorneys for Defendant IMA Financial  
Corporation, a California corporation  
26  
27  
28



1 Dated: December 12, 2013

Paladin Law Group LLP

2  
3 By: /s/ John Till  
John Till  
4 Attorneys for Third Party Defendant  
Dorothy Anderson, Trustee of the  
5 Anderson Marital Trust and The Anderson  
6 Tax Deferral Trust  
7

8 Filer's Attestation: Pursuant to Local Rule 5-1(i), I attest under penalty of perjury that concurrence in  
9 the filing of this document has been obtained from its signatories.  
10

11 DATED: December 12, 2013

Respectfully submitted,

14 /s/ Peter Morrisette

15 Peter Morrisette  
16  
17

18 It is so ordered that the CMC is reset from 12/19/13 to 3/27/14  
19 at 9:00 a.m. A joint CMC Statement shall be filed by 3/20/14.

20 Edward M. Chen  
21 U.S. District Judge  
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